CHAPTER 618

NONDOMESTIC INSURERS

SUBCHAPTER I
GENERAL PROVISIONS
618.01 Purposes.
618.02 Definitions.
SUBCHAPTER II
AUTHORIZATION OF NONDOMESTIC INSURERS
618.11 Application.
618.12 Certificate of authority.
618.14 Admission of nondomestic fraternals.
618.21 Corporation law requirements from chs. 180, 610, 611 and 623 applicable to nondomestic corporations.
618.22 Exclusive agency and management contracts of nondomestic corporations.
618.23 Requirements for nondomestic reciprocals.
618.24 Requirements for incorporated alien insurers.
618.25 Requirements for unincorporated nondomestic insurers.
618.26 Requirements for nondomestic fraternals.
618.28 Exemptions from Wisconsin law.
618.31 Changes in business plan.
618.32 Transfer of business.
618.34 Assessment by nondomestic company.
618.36 Release from regulation.
618.37 Revocation of certificate of authority.
618.39 Assisting unauthorized insurers.
SUBCHAPTER III
PERMISSIBLE BUSINESS BY UNAUTHORIZED INSURERS
618.40 Definitions.
618.41 Surplus lines insurance.
618.415 Group liability insurance issued by an unauthorized insurer.
618.416 Qualification for placement of surplus lines insurance with an unauthorized insurer.
618.42 Direct procurement of insurance.
618.43 Taxation of insurance written by unauthorized insurers.
618.44 Effect of illegal contracts.
618.45 Servicing of contracts made out of state.
618.47 Defense of action by unauthorized person.
618.48 Attorney fees.
618.49 Investigation, disclosure and taxation of insurance contracts.
618.50 Reporting of illegal insurance.
618.61 Reciprocal enforcement of foreign decrees.

Cross-reference: See definitions in ss. 600.03, 610.01 and 628.02.
Cross-reference: See also ch. Ins 41, Wis. adm. code.
NOTE: Chapter 260, laws of 1971, which created this chapter, contains explanatory notes.

SUBCHAPTER I

GENERAL PROVISIONS

618.01 Purposes. The purposes of this chapter are:

(1) To protect insureds, creditors and the public in this state by providing adequate standards and an orderly procedure for the authorization of nondomestic insurers;

(2) To prevent evasion by unauthorized insurers of the regulatory and tax laws of this state and to protect this state and its residents against loss from such action;

(3) To subject unauthorized insurers and other persons doing an insurance business in this state to the jurisdiction of the commissioner and the courts of this state;

(4) To protect authorized insurers from unfair competition by unauthorized insurers; and

(5) To provide an orderly method, under reasonable and practical safeguards, for procuring insurance from unauthorized insurers.

History: 1971 c. 260.

618.02 Definitions. For the purposes of this chapter, unless the context indicates otherwise:

(1) "Directly procured insurance" means insurance procured under s. 618.42.

(2) "Doing an insurance business" includes:

(a) Soliciting, making, or proposing to make an insurance contract;

(b) Taking or receiving an application for insurance;

(c) Collecting or receiving, in full or in part, an insurance premium;

(d) Issuing or delivering an insurance policy except as a messenger not employed by the insurer or by an insurance agent or broker;

(e) Inspecting risks, setting rates, disseminating information or advising on risk management in connection with the solicitation, negotiating, procuring or effectuation of insurance coverage;

(f) Investigating, settling, adjusting or litigating claims;

(g) In any way representing or assisting any person to do an insurance business or to procure insurance; and

(h) Any other act generally regarded as doing an insurance business.

(3) "Doing an insurance business" does not include:

(a) Acting as an attorney for a client; and

(b) Acting as a full-time salaried employee of an insured in the capacity of an insurance buyer or manager.

History: 1971 c. 260; 1981 c. 314.

SUBCHAPTER II

AUTHORIZATION OF NONDOMESTIC INSURERS

618.11 Application. Any person, including the United States branch of an alien insurer, authorized to transact the business of insurance as an insurer in another jurisdiction may apply for a certificate of authority to do an insurance business in this state, using the forms prescribed by the commissioner. The applicant shall include the information and documents the commissioner requests, including the following unless the commissioner excludes any of them:

(1) A copy of the insurer's articles and bylaws;

(2) Financial statements for the most recent completed fiscal year, with an explanation of the bases of all valuations and computations, in such detail as the commissioner reasonably requires;

(3) A summary, as detailed as the commissioner reasonably requires, of the insurer's financial history for the preceding 10 years;

(4) The names of its directors and principal officers and all their addresses and occupations for the preceding 10 years;

(5) In the case of an alien insurer, the name of its United States manager and for the preceding 10 years all the manager's addresses and occupations; and if the manager is corporate the names, addresses and occupations of the manager's directors and principal officers and detailed financial statements of the manager;

(6) A schedule listing:

(a) All jurisdictions in which it has done or been authorized to do an insurance business during the preceding 10 years;

(b) All jurisdictions to which it has applied for authorization to do an insurance business during the preceding 10 years, and the dates and results of such applications;

(c) All jurisdictions from which it has withdrawn during the preceding 10 years, and the reasons for its withdrawals;

(d) All administrative or criminal actions, orders or proceedings to which it or any of its directors or principal officers have been subjected on account of an alleged violation of any law governing insurance operations in any jurisdiction during the preceding 10 years, or not involving insurance operations if it is a felony;

(7) A description of its present business operations, including the coverages written and the territories in which it does business, and including a statement that it is in compliance with s. 620.05, with such documentary evidence of compliance as the commissioner requires;

(8) A list of any significant statements, reports or other documents that have been prepared during the preceding 10 years for any insurance regulatory authority or for general distribution among creditors, shareholders, members, subscribers or policyholders;

(9) If it has actually transacted an insurance business for less than 5 years, a detailed history of the past and projection of the anticipated operating results at the end of each of the first 5 years of operation, based where known on actual data and otherwise on reasonable assumptions of loss experience, premium and other income, operating expenses and acquisition costs;

(10) A statement showing to what extent organizational and promotional expenses have been paid, and to what extent organizational procedures are incomplete;

(11) A certificate from the domiciliary regulatory authority and the state of entry into the United States, if any, that so far as known the applicant is sound and that there are no legitimate objections to its proposed operations in this state;

(12) The plan for conducting an insurance business in this state, including:

(a) The geographical area in which business is intended to be done;

(b) The types of insurance intended to be written;

(c) The proposed marketing methods;

(d) The proposed method for the establishment of premium rates; and

(e) Copies of the policy and application forms intended to be used in this state;

(13) Any other information the commissioner reasonably requires; and

(14) Authorization to the commissioner or office to make inquiry of any person about the applicant, its manager under a management contract, its attorney in fact, its general agents, and any of the officers, directors or shareholders of any of them designated by the commissioner or office, and agreement by the applicant and any other persons so designated that in the absence of actual malice, no communication made in response to any such inquiry will subject the persons making it to an action for damages for the communication brought by the applicant or the designated person or a legal representative of either. No such action shall lie whether such agreement is made or not.

History: 1971 c. 260; 1977 c. 339; 1989 a. 332.

Cross-reference: See also s. Ins 6.52, Wis. adm. code.

618.12 Certificate of authority. (1) ISSUANCE. The commissioner shall either issue a certificate of authority to an applicant under s. 618.11 or issue an order refusing the certificate which finds:

(a) That not all requirements of the law have been met; or

(b) That the applicant is either not sound, not reliable, not entitled to public confidence or cannot reasonably be expected to perform its obligations continuously in the future; or

(c) That the applicant's directors and officers or, in the case of an alien insurer, its United States manager, are not sufficiently trustworthy, competent, experienced and free from conflict of interest to engage in the proposed business in this state and to comply continuously with the laws of this state; or

(d) That the methods and practices to be used in doing business are not consistent with the interests of the applicant's insureds, creditors or the public in this state.

(2) SUBSTITUTES FOR LEGAL REQUIREMENTS. If the commissioner finds that the applicant does not comply with all requirements of the law, the commissioner may after a hearing under s. 618.28 issue a certificate of authority if the purposes of each such requirement and the protection of insureds, creditors and the public in this state are otherwise achieved by:

(a) A deposit in trust to be established and maintained under s. 601.13; or

(b) A bond conditioned on the satisfaction of the purposes of the requirement and acceptable to the commissioner; or

(c) Special limits on the applicant's business or methods of operation in this state or elsewhere; or

(d) Additional or alternative protective devices that the commissioner considers satisfactory.

(3) LIMITS. The certificate of authority shall specify the terms of any deposit or bond required as a condition for authorization, any special limits placed on the insurer's business or methods of operation in this state, and any other restrictive terms imposed under sub. (2).

(4) ALTERATION OF CERTIFICATE. An insurer may at any time apply to the commissioner for a new certificate of authority, removing, altering or adding limits on its business or methods of operation. The application shall be accompanied by so much of the information under s. 618.11 as the commissioner reasonably requires. The commissioner shall issue the new certificate as requested if he or she would do so if an initial application were being made.

History: 1971 c. 260; 1979 c. 102 s. 236 (5), (6).

618.14 Admission of nondomestic fraternals. (1) APPLICATION. A nondomestic fraternal may apply for authorization to transact business in this state, by filing with the commissioner:

(a) A certified copy of its articles and bylaws;

(b) A power of attorney to the commissioner to receive service of process and other papers;

(c) A certificate from the proper official in its home jurisdiction that the fraternal is authorized to transact business therein;

(d) Each of its forms of contracts;

(e) A statement of its business in the form required by the commissioner, showing that the business of the fraternal substantially complies with all the provisions of law relating to like domestic fraternals; and

(f) Such other information as the commissioner may deem necessary.

(2) EXAMINATION. The commissioner shall examine the applicant fraternal.

(3) CERTIFICATE OF AUTHORITY. The commissioner shall grant a certificate of authority to do business in this state if the fraternal's condition and practices protect the interests of potential insureds, creditors and the public.

History: 1975 c. 373.

618.21 Corporation law requirements from chs. 180, 610, 611 and 623 applicable to nondomestic corpora-

tions. (1) STRICT COMPLIANCE. No nondomestic corporation may be authorized to do business in this state unless it complies strictly with the following requirements:

(a) *Financial requirements.* The financial requirements of ss. 611.19 and 623.11;

(b) *Other requirements.* The requirements of s. 180.1506, the requirements of s. 611.41 (1) as modified by s. 611.41 (3), s. 611.54 (1) (a), the reporting requirement of s. 611.54 (2) whenever removal is made involuntarily under the law of the domicile, and s. 611.57; and

(c) *Requirements applicable to new corporations.* For 5 years after the initial issuance of a certificate of authority in its domiciliary jurisdiction, the requirements of s. 611.29 (2); and if the corporation has transacted an insurance business for less than 5 years or has not paid in full all organizational and promotional expenses, it must still have initial expendable surplus considered by the commissioner to be adequate, subject to the limits of s. 611.19.

(2) SUBSTANTIAL COMPLIANCE. (a) *General.* No nondomestic insurance corporation may be authorized to do business in this state unless it everywhere complies substantially with ss. 611.12 (2) (d), 611.24 and 611.25 except that the approval requirement of s. 611.25 (1) does not apply, and s. 611.26.

(b) *Corporate reorganization or transformation.* When any corporate reorganization, transformation or liquidation of a nondomestic insurer is proposed by it or approved by the domiciliary commissioner or by another official act, notice shall be given to the commissioner promptly.

(3) ORDERS IMPOSING AND ELIMINATING RESTRICTIONS. The commissioner may issue orders under s. 611.03 that are applicable to nondomestic corporations.

(4) OTHER REQUIREMENTS. After a hearing, the commissioner may by order apply any provision of ch. 611 to a nondomestic corporation if the commissioner finds that it is necessary for the protection of the interests of its insureds, creditors or the public in this state.

(5) FRATERNALS. This section does not apply to fraternals.

History: 1971 c. 260; 1973 c. 184; 1975 c. 373; 1983 a. 192; 1989 a. 303; 1991 a. 316; 1997 a. 79.

Legislative Council Note to sub. (5), 1975: A special section applies to fraternals. See s. 618.26. In contrast, s. 618.22 does not apply to fraternals. [Bill 643-S]

618.22 Exclusive agency and management contracts of nondomestic corporations.

(1) FILING OF CONTRACT. No nondomestic insurer may be a party to any exclusive agency contract or management contract as defined in ss. 611.66 and 611.67 respectively, unless the contract is filed with the commissioner and not disapproved under this section within 30 days after filing, or such reasonable extended period as the commissioner may specify by notice given within the 30 days.

(2) DISAPPROVAL. The commissioner shall disapprove a contract under sub. (1) or s. 611.67 if he or she finds that:

(a) It subjects the insurer to excessive charges; or

(b) The contract extends for an unreasonable period of time; or

(c) The contract does not contain fair and adequate standards of performance; or

(d) The persons empowered under the contract to manage the company are not sufficiently trustworthy, competent, experienced and free from conflict of interest to manage the company with due regard for the interests of its insureds, creditors or the public; or

(e) The contract contains provisions which impair the interests of its insureds, creditors or the public in this state.

History: 1971 c. 260; 1979 c. 102 s. 236 (5); 1985 a. 29.

Cross-reference: See also s. Ins 42.07, Wis. adm. code.

618.23 Requirements for nondomestic reciprocals.

(1) CONDITIONS OF AUTHORIZATION. No nondomestic reciprocal may be authorized to do business in this state unless under the laws of its domicile or the provisions of its power of attorney or otherwise it can sue and be sued in its own name, and the assets resulting from the exchange of insurance contracts can be reached by its creditors; and either:

(a) *Nonassessable reciprocals.* If it issues only nonassessable policies, it meets all the financial requirements for a mutual corporation in like circumstances including surplus, whether unallocated or in subscribers' accounts, that is at least as great as the level specified by s. 623.11; or

(b) *Assessable reciprocals.* If it issues any assessable policies, it meets all the requirements for a mutual corporation issuing assessable policies in like circumstances and its subscribers are liable to the exchange to the limit of their assessability without regard to the validity or collectibility of any assessment levied against other subscribers.

(2) SUBSTITUTE FOR THE LIABILITY UNDER SUB. (1) (B). Where the liability of subscribers does not satisfy sub. (1) (b), the commissioner may nevertheless authorize an assessable reciprocal if he or she is satisfied that practices are actually followed by the attorney in fact which ensure the capacity and willingness of all subscribers to pay assessments if called upon to do so, or which otherwise ensure the solidity of the operation.

(3) CORPORATION PROVISIONS APPLICABLE. To the extent consistent with the nature of a reciprocal, the provisions of ch. 611 that are made applicable to nondomestic mutual corporations by s. 618.21 apply to nondomestic reciprocals and the provisions and requirements applicable to principal officers of corporations apply to the attorneys in fact of reciprocal insurers.

History: 1971 c. 260; 1979 c. 102 s. 236 (5).

618.24 Requirements for incorporated alien insurers.

(1) CONDITIONS FOR AUTHORIZATION. No incorporated alien insurer may be authorized to do business in this state unless:

(a) It has operated for 5 years in its domicile or the commissioner finds other grounds for being confident that it will be solid during its formative period;

(b) It supplies and commits itself to maintain in the United States a deposit or bond in an amount the commissioner deems sufficient to protect the interests of insureds, creditors and the public in this state; and

(c) It files with the commissioner such agreement as the commissioner requires with respect to records, reports and submission to examinations, including an undertaking to keep its records, reports and other documents constantly available in full in the English language so far as they are relevant to its United States business, and an undertaking to keep records and make reports on United States business in a form satisfactory to the commissioner.

(2) DEPOSITS. A deposit under sub. (1) (b) may be made as specified in s. 601.13 or with another trustee in this or another state approved by the commissioner. The deposit shall be in trust for such persons as the commissioner deems appropriate to achieve the purposes of sub. (1) (b). The trustees shall supply a certificate of the deposit in whatever form and at whatever intervals the commissioner reasonably requires.

(3) BONDS. A bond satisfies sub. (1) (b) if it is issued by an insurer authorized to do a surety business in this state and is conditioned on nonperformance of any obligation to such persons as the commissioner considers appropriate to achieve the purposes of sub. (1) (b). Each such bond shall cover any claims that arise out of occurrences prior to termination of the bond, and shall not be terminable on any ground without at least 30 days' notice to

the commissioner. Each such bond shall be in such form and be renewed at such intervals as the commissioner reasonably requires.

History: 1971 c. 260; 1979 c. 102 s. 236 (6).

618.25 Requirements for unincorporated nondomestic insurers. No nondomestic individual underwriter or syndicate may be authorized to do business in this state unless:

(1) It complies with such requirements stated in s. 618.24 as are applicable to an unincorporated insurer;

(2) It files undertakings with the commissioner to comply with legal controls and institutional practices for securing the performance of obligations that are functionally equivalent to those imposed on nondomestic insurance corporations, even if in detail the controls and practices are dissimilar; and

(3) The commissioner is satisfied that it keeps records and can supply information that will enable the commissioner to protect fully the interests of insureds, creditors and the public in this state.

History: 1971 c. 260; 1979 c. 102 s. 236 (21).

618.26 Requirements for nondomestic fraternals. (1) STRICT COMPLIANCE. No nondomestic fraternal may be authorized to do business in this state unless it complies strictly with all of the following requirements:

(a) *Financial requirements.* The financial requirements of ss. 614.19 and 623.11.

(b) *Other requirements.* The requirements of s. 180.1506, 611.54 (1) (a) as incorporated by s. 614.54, the reporting requirement of s. 611.54 (2) as incorporated by s. 614.54 whenever removal is made involuntarily under the laws of the domicile, s. 611.57 as incorporated by s. 614.57, and ss. 614.10, 614.12 (1) (c), 614.41 (2) and 614.82 (1).

(c) *Requirements applicable to new fraternals.* For 5 years after the initial issuance of a certificate of authority in its domiciliary jurisdiction, the requirements of s. 614.29 (2); and if the fraternal has transacted an insurance business for less than 5 years or has not paid in full all organizational and promotional expenses, it must still have initial expendable surplus considered by the commissioner to be adequate, subject to the limits of s. 614.19.

(2) SUBSTANTIAL COMPLIANCE. (a) *General.* No nondomestic fraternal may be authorized to do business in this state unless it everywhere complies substantially with ss. 611.24 to 611.26 as incorporated by s. 614.24, except that the approval requirement of s. 611.25 (2) does not apply.

(b) *Corporate reorganization or transformation.* When any corporate reorganization, transformation or liquidation of a nondomestic fraternal, or any levy to cover a deficiency under a law comparable to s. 614.19 (3), is proposed by it or approved by the domiciliary commissioner or by another official act, notice shall be given to the commissioner promptly.

(3) ORDERS IMPOSING AND ELIMINATING RESTRICTIONS. The commissioner may issue orders under s. 614.03 that are applicable to nondomestic fraternals.

(4) OTHER REQUIREMENTS. After a hearing, the commissioner may by order apply any provision of ch. 614 to a nondomestic fraternal upon a finding that it is necessary for the protection of the interests of its members, creditors or the public in this state.

History: 1975 c. 373, 421; 1989 a. 303; 1999 a. 85.

Legislative Council Note, 1975: This section closely parallels s. 618.21. [Bill 643-S]

618.28 Exemptions from Wisconsin law. (1) EXEMPTIONS. Any nondomestic insurer authorized to do business in this state may apply for and the commissioner may make an order exempting it from any requirement otherwise applicable to it, if the commissioner finds after a hearing:

(a) That in the absence of the statutory requirement in this state the requirement would not be imposed on the insurer or on a similar Wisconsin insurer by the law of the insurer's domicile;

(b) That exemption from the requirement will not endanger the interests of insureds, creditors or the public in this state; and

(c) That the exemption will not give the insurer an unfair competitive advantage over domestic insurers.

(2) NOTICE AND HEARING. The hearing may not be held until at least 30 days after notice has been given to competing insurers authorized to do business in this state by publication in the administrative register or otherwise in a manner considered adequate by the commissioner. Any such insurer may appear in the hearing and state its position on sub. (1) (c).

History: 1971 c. 260; 1991 a. 316.

618.31 Changes in business plan. (1) NOTIFICATION. Within 5 years after the initial issuance of a certificate of authority to a nondomestic insurer by its domiciliary jurisdiction no substantial change may be made in the business plan and the insurer may not substantially deviate from it unless notice of the proposed action is filed with the commissioner 30 days in advance of the proposed effective date. The commissioner at least 5 days before the proposed effective date may request that the effective date be deferred for an additional period not exceeding 30 days.

(2) DISAPPROVAL. (a) *Applicability in this state.* If the commissioner finds that effectiveness of the proposed change within this state would be contrary to the laws of this state or to the interests of insureds, creditors or the public in this state, the commissioner may prohibit the application of the change to this state.

(b) *Changes outside state.* If the commissioner finds after a hearing that the application of the change outside of this state would endanger the interests of insureds, creditors or the public in this state, the commissioner may revoke the insurer's certificate of authority unless it agrees not to make such a change.

History: 1971 c. 260; 1979 c. 102 s. 236 (6); 1991 a. 316.

618.32 Transfer of business. (1) REPORT TO COMMISSIONER. Any action by which a nondomestic insurer proposes to transfer to another person or to reinsure any part of its insurance business in this state, other than in the normal and usual course of business, shall be reported to the commissioner not less than 30 days in advance of the proposed effective date. The commissioner may defer the effective date for an additional period not exceeding 30 days by written notice to the insurer before expiration of the initial 30-day period.

(2) DISAPPROVAL. The commissioner may, within the 30-day period or its extension, prohibit the proposed action if it would be contrary to the law or to the interests of insureds, creditors or the public in this state.

History: 1971 c. 260.

618.34 Assessment by nondomestic company. Every nondomestic mutual insurer authorized in this state shall, immediately after making an assessment upon any of its members in this state, notify the commissioner thereof with a statement of the condition of the insurer, setting forth the facts showing the necessity for the assessment. No such insurer may make or increase any assessment because of its inability to collect assessments from its members in other states in which its policies were written in violation of law.

History: 1971 c. 260.

618.36 Release from regulation. (1) CONTINUANCE OF REGULATION. A nondomestic insurer authorized under this chap-

ter is subject to regulation under the applicable provisions of chs. 600 to 646 until released from regulation under this section.

(2) APPLICATION FOR RELEASE. A nondomestic insurer may apply for release from regulation by filing with the commissioner:

(a) Its certificate of authority;

(b) A schedule of its outstanding liabilities from policies issued in this state, to residents of this state, or on risks located in this state and from other business transactions in this state;

(c) A plan for securing the discharge of such liabilities; and

(d) Such other information as the commissioner reasonably requires.

(3) RELEASE ORDER. The commissioner shall release the insurer from regulation if he or she finds:

(a) That the insurer has ceased to do any new business in this state;

(b) That the discharge of existing liabilities to creditors in this state is sufficiently secured; and

(c) That the release would not otherwise be prejudicial to the interests of insureds, creditors or the public in this state, or of all insureds, creditors and the public in the United States if this state is the state of entry of the insurer into the United States.

(4) NOTIFICATION OR PUBLICATION. The commissioner may, before deciding on the release, require the insurer to notify all agents or other classes of potentially interested persons in a manner he or she prescribes, or in a manner he or she prescribes to publish at its own expense its intention to withdraw. The notice shall advise affected persons to communicate to the commissioner any objections they may have to the withdrawal.

(5) DEPOSITS AND SUBJECTION TO JURISDICTION. The commissioner may, as a prerequisite for releasing the insurer, require a deposit under s. 601.13, a bond issued by a surety authorized in this state, or other appropriate security or reinsurance in an amount sufficient to secure the proper discharge of the insurer's liabilities in this state. The commissioner may also require an agreement to remain subject to the jurisdiction of the commissioner and the courts of this state with respect to any matter arising out of business done in this state prior to the release.

History: 1971 c. 260; 1977 c. 339; 1979 c. 89 s. 543; 1979 c. 102 s. 236 (5), (7).

618.37 Revocation of certificate of authority. Whenever there are grounds for delinquency proceedings against a nondomestic insurer under ch. 645, the commissioner may, after a hearing, revoke, suspend or limit its certificate of authority. No such action shall affect insurance already issued and the insurer shall remain subject to regulation until released under s. 618.36.

History: 1971 c. 260.

618.39 Assisting unauthorized insurers. (1) CONDUCT PROHIBITED. No person may do an insurance business in this state if the person knows or should know that the result is or might be the illegal placement of insurance with an unauthorized insurer or the subsequent servicing of an insurance policy illegally placed with an unauthorized insurer.

(2) PERSONAL LIABILITY FOR VIOLATION. Any person who violates sub. (1) is personally liable to any claimant under the policy for any damage proximately caused by the person's violation. That damage may include damage resulting from the necessity of replacing the insurance in an authorized insurer or the failure of the unauthorized insurer to perform the insurance contract.

(3) STANDARDS BY RULE. (a) The office may by rule promulgate standards for any of the following:

1. Establishing that a person should know that the result of insurance business is or might be the illegal placement of insurance with an unauthorized insurer or the subsequent servicing of an insurance policy illegally placed with an unauthorized insurer.

2. Imposing requirements under s. 601.42 or 628.04 or sanctions or remedial measures under sub. (2) or s. 601.64, or any other applicable penalty or remedial provision of chs. 600 to 646, for a violation of this section.

(b) Notwithstanding par. (a) 1., it is not necessary for the office to promulgate a rule under par. (a) 1. to establish that a person violated sub. (1).

History: 1971 c. 260; 1975 c. 371, 421; 2001 a. 65.

Legislative Council Note, 1975: Sub. (2) is added as an effective sanction to suppress knowing placement of insurance with unauthorized insurers. It is adapted from Conn. Insurance Laws, Sec. 38-90. Insurance agents and others should guarantee performance of insurance contracts they negotiate knowingly with unlicensed insurers, unless legally negotiated under the surplus lines law. In addition, the sanctions of s. 601.64 apply to violators of this provision. [Bill 16-S]

SUBCHAPTER III

PERMISSIBLE BUSINESS BY UNAUTHORIZED INSURERS

618.40 Definitions. In this subchapter, unless the context requires otherwise:

(1) "Affiliated group" means all persons that control, are controlled by, or are under common control with, an insured.

(2) "Authorized insurer" means an insurer that is licensed, or authorized, to transact the business of insurance under the law of the home state.

(3) "Control" means, with respect to a person having control over another person, that the person does any of the following:

(a) Directly or indirectly, or acting through one or more other persons, owns, controls, or has the power to vote 25 percent or more of any class of voting securities of a person.

(b) Controls in any manner the election of a majority of the directors or trustees of a person.

(3m) "Domestic surplus lines insurer" means an insurer that has a certificate to do business as a domestic surplus lines insurer under s. 618.41 (13).

(4) (a) Except as provided in par. (b), "home state" means, with respect to an insured, one of the following:

1. The state in which the insured maintains its principal place of business or, in the case of an insured who is an individual, the individual's principal residence.

2. If 100 percent of the insured risk is located outside of the state referred to in subd. 1., the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(b) If more than one insured from an affiliated group are named insureds on a single surplus lines insurance contract, "home state" means the state, as determined under par. (a), of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract.

(5) "Premium tax" means, with respect to unauthorized insurance, any tax, fee, assessment, or other charge imposed by this state directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(6) "Principal place of business" means, with respect to determining the home state of an insured, the state where the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured.

(7) "Principal residence" means, with respect to determining

the home state of an insured who is an individual, the state where the individual resides for the greatest number of days during a calendar year.

(8) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(9) "Surplus lines broker" means a person that is licensed in a state to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in that state with unauthorized insurers.

(10) "Surplus lines insurance" means any insurance to which all of the following apply:

(a) This state is the home state of the insured.

(b) The insurance is permitted under this subchapter to be placed through a surplus lines agent or broker with an unauthorized insurer eligible to accept the insurance.

(11) "Unauthorized insurance" means any insurance permitted in a state to be placed directly or through a surplus lines broker with an unauthorized insurer eligible to accept such insurance.

History: 2011 a. 224; 2017 a. 16.

618.41 Surplus lines insurance. (1) GENERAL PERMISSION. A domestic surplus lines insurer or a nondomestic insurer which has not obtained a certificate of authority to do business in this state under s. 618.12 may negotiate for and make insurance contracts with persons in this state and on risks located in this state, subject to the limitations and requirements specified in this section.

(2) INCIDENTAL ACTS PERMITTED. With respect to contracts made under this section, the insurer may in this state also inspect risks to be insured, collect premiums and adjust losses, and do all other acts reasonably incidental to the contract.

(3) SOLICITATION PROHIBITED. Nothing in subs. (1) and (2) permits the solicitation of business in this state by or on behalf of an insurer without a certificate of authority. The commissioner may by rule prescribe the manner in which insurance agents or brokers may advertise the availability of their services in procuring, on behalf of persons seeking insurance, contracts with domestic surplus lines insurers or with insurers without a certificate of authority.

(4) INFORMATION TO POLICYHOLDER. The insurer and any agent or broker are obligated promptly to furnish the policyholder a statement in a form prescribed or approved by the commissioner, informing the policyholder that the insurer has not obtained a certificate of authority to do business in this state and is not regulated in this state except as provided in this section.

(5) TRADE PRACTICES. With respect to contracts made under this section, nondomestic insurers and domestic surplus lines insurers are subject to s. 628.34 and rules promulgated thereunder.

(6) PROHIBITED AND RESTRICTED SURPLUS LINES BUSINESS. (a) *Prohibited classes.* The commissioner may by rule prohibit the making of contracts under sub. (1) in a specified class of insurance if authorized insurers provide an established market for the class in this state which is adequate and reasonably competitive with reputable unauthorized insurers.

(b) *Restricted classes.* The commissioner may by rule place restrictions and limitations on and create special procedures for the making of contracts under sub. (1) for a specified class of insurance if there have been abuses of placements in the class or if the policyholders in the class, because of limited financial resources, business experience or knowledge, cannot be expected to protect their own interests adequately.

(c) *Exclusion of individual insurers.* The commissioner may prohibit an individual insurer or group policyholder, including but not limited to a risk purchasing group, from making any contracts under sub. (1) or issuing evidence of coverage and may prohibit all insurance agents and brokers from dealing with the insurer or group policyholder, if:

1. It has willfully violated this section, ss. 610.11 (1), 628.34, or any rule promulgated under any of them; or

2. It has failed to pay the fees and taxes specified in s. 618.43; or

3. The commissioner has reason to believe that the insurer, or the insurer which issued the policy to a group policyholder, is in an unsound condition or the insurer or group policyholder is operated in a fraudulent, dishonest or incompetent manner or in violation of the law of its domicile.

(d) *Evaluations.* The commissioner may issue lists of unauthorized nondomestic insurers whose solidity he or she believes to be doubtful or whose practices he or she believes to be objectionable. The commissioner may issue lists of unauthorized nondomestic insurers he or she believes to be reliable and solid. The commissioner may also issue other relevant evaluations of unauthorized insurers. No action may lie against the commissioner or any employee of the office for anything said in the issuance of such lists and evaluations.

(6m) RUSTPROOFING WARRANTIES INSURANCE. An insurer issuing a policy of insurance under this section to cover a warranty, as defined in s. 100.205 (1) (g), shall comply with s. 632.18 and the policy shall be on a form approved by the commissioner under s. 631.20.

(7) SURPLUS LINES AGENT'S LICENSE. (a) The commissioner may, pursuant to s. 628.04 (2), issue to any licensed agent or broker a surplus lines license granting authority to procure insurance under this section.

(b) The fee for issuance of a surplus lines license is the fee required by s. 601.31 (1) (L) 3.

(7m) RISK PURCHASING GROUPS; LICENSED AGENTS. A natural person may not solicit, negotiate or obtain liability insurance for a risk purchasing group from an unauthorized insurer unless the natural person is licensed as a surplus lines agent under sub. (7).

(8) SURPLUS LINES AGENTS, BROKERS AND GROUP POLICYHOLDERS. (a) *Responsibility.* An agent or broker may not place insurance under this section with, and a person who offers liability insurance coverage under a group policy may not solicit the purchase of coverage under a group policy issued by, an unauthorized insurer if all of the following exist:

1. The insurer is financially unsound, engaging in unfair practices or otherwise substandard.

2. The agent, broker or other person fails to give the applicant written notice of the insurer's deficiencies.

3. The agent, broker or other person either knows of, or fails to adequately investigate, the insurer's financial condition and general reputation.

(b) *Retention of notice.* An agent, broker or group policyholder shall keep in its office for at least 5 years any notice provided under par. (a) 2.

(c) *Financially sound.* To be financially sound for purposes of par. (a) 1., an insurer must be able to satisfy standards comparable to those applied under the laws of this state to authorized insurers, unless this state is the insured's home state, in which case s. 618.416 applies.

(9) REQUIREMENTS FOR SURPLUS LINES POLICIES. (a) *Required information.* Every new or renewal insurance policy procured and delivered under this section shall bear the name and address of the insurance agent or broker who procured it and shall

have stamped or affixed upon it the following: "This insurance contract is with an insurer which has not obtained a certificate of authority to transact a regular insurance business in the state of Wisconsin, and is issued and delivered as a surplus line coverage pursuant to s. 618.41 of the Wisconsin Statutes. Section 618.43 (1), Wisconsin Statutes, requires payment by the policyholder of 3 percent tax on gross premium."

(b) *Additional required information.* The policy shall include a description of the subject of the insurance, and indicate the coverage, conditions and term of the insurance, the premium charged and premium taxes to be collected from the policyholder, and the name and address of the policyholder and insurer. If the direct risk is assumed by more than one insurer, the policy shall state the names and addresses of all insurers and the portion of the entire direct risk each has assumed.

(c) *Surplus lines policies issued by domestic surplus lines insurers.* Notwithstanding par. (a), every new or renewal insurance policy procured and delivered under this section by a domestic surplus lines insurer shall bear the name and address of the insurance agent or broker who procured it and shall have stamped or affixed upon it the following: "This insurance contract is issued and delivered as a surplus line coverage pursuant to s. 618.41 of the Wisconsin Statutes. Section 618.43 (1), Wisconsin Statutes, requires payment by the policyholder of 3 percent tax on gross premium. If the insurer that issued and delivered this policy becomes insolvent, insureds or claimants will not be eligible for Wisconsin Insurance Security Fund protection under chapter 646 of the Wisconsin Statutes."

(10) ISSUANCE OF EVIDENCE OF INSURANCE. Upon placing a new or renewal coverage under this section, the agent or broker shall promptly deliver to the policyholder or his or her agent evidence of the insurance consisting either of the policy as issued by the insurer or, if the policy is not then available, a certificate, cover note or other confirmation of insurance.

(11) FORM REGULATION. The commissioner may by rule subject policies written under this section to as much of the regulation provided by chs. 600 to 646 and 655 for comparable policies written by authorized insurers as the commissioner finds to be necessary to protect the interests of insureds and the public in this state.

(12) APPLICATION WHEN THIS STATE IS NOT THE INSURED'S HOME STATE. The placement of insurance under this section is not subject to subs. (4), (7m), (8), (9), or (10) if this state is not the insured's home state and the placement complies with the laws of the insured's home state.

(13) DOMESTIC SURPLUS LINES INSURERS. (a) An insurer domiciled in this state may submit to the commissioner an application for a certificate that permits the insurer to provide surplus lines insurance as a domestic surplus lines insurer. The commissioner shall issue the certificate to the insurer if the insurer satisfies all of the following requirements:

1. The insurer's board of directors has adopted a resolution requesting to be certified as a domestic surplus lines insurer.

2. The insurer is eligible to provide surplus lines insurance in a state other than this state.

3. The insurer has capital and surplus of no less than $15,000,000.

4. If the insurer applying for a certificate under this subsection has issued insurance policies in this state as a domestic insurer, the insurer includes in its application a plan for the insurer's proposed treatment of those policies in compliance with chs. 600 to 655.

(b) A domestic surplus lines insurer is subject to chs. 600 to 655 as follows:

1. A domestic surplus lines insurer is subject to all requirements of this subchapter and the requirements that apply to a domestic insurer organized under ch. 611.

2. Notwithstanding subd. 1., a surplus lines insurance policy issued in this state by a domestic surplus lines insurer is only subject to the requirements of this section and the rules promulgated under this section and shall be exempt from all statutory requirements, including requirements relating to insurance rating plans, policy forms, policy cancellation and nonrenewal, and premium charged to the insured, in the same manner as a surplus lines insurance policy issued by a nondomestic insurer.

3. Nothing in this section shall be construed to affect the application of ch. 646 to insurance policies that were issued by a domestic insurer prior to that domestic insurer obtaining a certificate to do business as a domestic surplus lines insurer under this subsection.

(c) A domestic surplus lines insurer shall be considered a nonadmitted insurer as defined in 15 USC 8206 with respect to surplus lines insurance the domestic surplus lines insurer issues in this state.

(d) Insurance transacted by a domestic surplus lines insurer under this section is subject to taxation as specified under s. 618.43.

(e) A surplus lines insurance policy issued in this state by a domestic surplus lines insurer under this section is not subject to the Wisconsin insurance security fund under ch. 646.

(f) No domestic surplus lines insurer may offer insurance other than under this section.

(g) A domestic surplus lines insurer, after obtaining a certificate to do business as a domestic surplus lines insurer under this section, may not apply to the commissioner to issue policies other than as a domestic surplus lines insurer.

History: 1971 c. 260; 1975 c. 371 ss. 45, 50; 1979 c. 89; 1979 c. 102 ss. 147, 236 (6), (13), (21), 237; 1981 c. 20 s. 2202 (26) (a); 1985 a. 29, 332; 1987 a. 247; 1989 a. 187 s. 29; 2009 a. 177; 2011 a. 224; 2017 a. 16.

Independent actual notice to a policyholder, in the absence of stamping or affixing the information required under sub. (9) (a) to the policy, was insufficient. Combined Investigative v. Scottsdale Ins., 165 Wis. 2d 262, 477 N.W.2d 82 (Ct. App. 1991).

Surplus-lines insurance must be "placed" with an insurer through an agent or broker who holds a Wisconsin surplus-lines license. However, no provision requires a person to hold a surplus-lines license to negotiate a policy or perform the underwriting unless the policy is for a risk purchasing group under sub. (7m). In addition, a broker can perform the role under sub. (8) with respect to a given insurer and then allow others to place policies with that insurer under the broker's license. Midwest Commercial Funding, LLC v. Cincinnati Specialty Underwriters Insurance Co., 399 F. Supp. 3d 736 (2019).

The proposal requirement under sub. (4) is distinct from the stamping requirement under sub. (9) (a), and each disclosure must be made at a different time. The proposal letter must be furnished to the policyholder promptly, which means before the policy has been procured, for it informs the insured that the agent or broker intends to procure the policy on a surplus-lines basis and instructs the insured to contact the agent or broker if the proposal is not satisfactory. In contrast, the information required to be stamped on the policy must be disclosed at the time the policy is procured and delivered. Midwest Commercial Funding, LLC v. Cincinnati Specialty Underwriters Insurance Co., 399 F. Supp. 3d 736 (2019).

618.415 Group liability insurance issued by an unauthorized insurer.

(1) NOTICE BEFORE TAKING APPLICATION. A person may not take an application for liability insurance coverage under a group liability insurance policy which is issued by an unauthorized insurer and which is for a risk that resides or is otherwise located in this state, unless before taking the application the person gives the applicant clear and prominent written notice of all of the following:

(a) The insurer's deficiencies, if any, under s. 618.41 (8) (a) 1.

(b) That the insurer has not obtained a certificate of authority in this state and is not regulated in this state.

(c) That the risk is not protected by the Wisconsin insurance security fund.

(d) Any other information required by the commissioner by rule.

(2) NOTICE IN THE EVIDENCE OF INSURANCE. A person may not provide liability insurance coverage under a group insurance policy which is issued by an unauthorized insurer to a member for a risk that resides or is otherwise located in this state, unless the evidence of insurance clearly and prominently includes all of the following:

(a) The information and notice required under s. 618.41 (9).

(b) That the risk is not protected by the Wisconsin insurance security fund.

(c) Any other information required by the commissioner by rule.

History: 1987 a. 247.

618.416 Qualification for placement of surplus lines insurance with an unauthorized insurer. An intermediary may not place surplus lines insurance under s. 618.41 with an unauthorized insurer if this state is the home state of the proposed insured, unless at the time of placement all of the following apply to the unauthorized insurer:

(1) If the unauthorized insurer is domiciled in a United States jurisdiction, the insurer satisfies all of the following:

(a) In its domiciliary jurisdiction, the unauthorized insurer is authorized to write the type of insurance to be placed with the insurer.

(b) Either the unauthorized insurer has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of either the minimum capital and surplus requirements under the laws of this state or $15,000,000 or the commissioner affirmatively finds that the unauthorized insurer's capital and surplus are acceptable. The commissioner's finding shall be based on factors that include quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. In no event may the commissioner find that the unauthorized insurer's capital and surplus are acceptable if the unauthorized insurer's capital and surplus are less than $4,500,000.

(2) If the unauthorized insurer is an alien insurer, the insurer is listed on the quarterly listing of alien insurers maintained by the international insurers department of the National Association of Insurance Commissioners and meets additional requirements regarding the use of the list established by rule of the commissioner.

History: 2011 a. 224; 2019 a. 66.

618.42 Direct procurement of insurance. (1) PERMITTED DIRECT PROCUREMENT. Subject to the restrictions of this section, any person seeking insurance may obtain it if no agent or broker resident or doing business in this state is involved and if negotiations occur primarily outside this state. Negotiations by mail occur within this state if a letter is sent from or to an address in this state.

(2) REPORTS AND TAXATION. Every policyholder who procures or renews insurance otherwise subject to chs. 600 to 646 and 655 from any insurer not authorized to do business in this state, other than insurance procured under s. 618.41 and the renewal of guaranteed renewable insurance lawfully issued outside this state, shall within 60 days after the insurance procured or renewed report to the commissioner in such form as he or she requires and pay the taxes specified by s. 618.43.

(3) PROHIBITED PLACEMENT WITH UNAUTHORIZED INSURERS. (a) *Sales of personal property.* Any insurance on personal property sold on the installment plan or under a conditional sales contract or equivalent security agreement under chs. 401 to 411 for which a charge is made to the buyer as a part of the consideration in the agreement of sale shall be placed with an insurer authorized to do business in this state.

(c) *Compulsory insurance.* Whenever the law of this state requires a person to purchase insurance on risks in this state, the person shall obtain it from an insurer authorized to do business in this state, or under s. 618.41.

History: 1971 c. 260; 1979 c. 89; 1979 c. 102 s. 236 (5), (8); 1981 c. 314; 1989 a. 187 s. 29; 1991 a. 148, 304, 315; 1993 a. 213.

Cross-reference: See also ss. Ins 6.17 and 6.19, Wis. adm. code.

618.43 Taxation of insurance written by unauthorized insurers. (1) BUSINESS SUBJECT TO TAXATION. (a) Subject to par. (bc), insurers, agents, brokers, and policyholders are liable, as provided in sub. (2), for a premium tax of 3 percent of gross premiums charged for insurance, excluding annuities, if any of the following is satisfied:

1. The insurance is transacted under s. 618.41 (1) or 618.42.

2. The insurance is transacted by an unauthorized insurer that is a risk retention group, including a foreign risk retention group authorized to provide health care liability insurance under s. 655.23 (3) (am) that has not been issued a certificate of authority under s. 618.12.

3. The insurance is transacted by an unauthorized insurer for a risk purchasing group.

(bc) Notwithstanding any other provision of this section, with respect to premiums charged on policies issued or renewed on or after July 21, 2011, for insurance to which par. (a) applies, the tax under par. (a) is required only if the home state of the insured is this state, and it shall be levied on the entire gross premium charged, including premium attributable to those portions of the risk located outside of this state.

(c) If the tax required under this subsection is not paid within the time prescribed under sub. (3), the commissioner shall impose a penalty of 25 percent, plus one percent per month from default until payment.

(d) Any insurance business transacted in violation of the law is subject to a premium tax of 5 percent of gross premiums charged for the insurance.

(2) PAYMENT OF TAX. The insurance agent or broker and the policyholder are jointly and severally liable for the payment of the tax required under sub. (1) on business written under s. 618.41 (1), and the insurer, insurance agent or broker and policyholder are jointly and severally liable for the payment of any other tax required under sub. (1). The tax shall ultimately be paid by the policyholder. Absorption of the tax by either the agent or broker or the insurer is an unfair method of competition under s. 628.34 (2) (b).

(3) ACCOUNTING AND REPORTING. The commissioner shall by rule prescribe accounting and reporting forms and procedures for insurers, agents or brokers and policyholders for the purpose of determining the amount of the taxes owed, and the manner and time of payment.

(4) APPLICABILITY OF TAX LAW. Section 76.68 is applicable to any tax payable under this section.

(5) EXCLUSIVE NATURE. The tax under this section is in lieu of all other taxes on insurance business and of fire department dues.

(6) ALLOCATION OF TAX. With respect to gross premiums charged on policies issued or renewed before July 21, 2011, if a policy covers risks that are only partially located in this state, the premium shall be reasonably allocated among the states on the basis of risk locations in computing the tax, except that all premiums received in this state or charged on policies written or negotiated in this state shall be taxable in full under this section, with a

credit for any tax actually paid in another state to the extent of a reasonable allocation on the basis of risk locations.

(7) TAXES AS TRUST FUNDS. All premium taxes collected under this section by an agent or broker or by an insurer are the property of this state, to be held in trust for the state.

(8) TAXES AS PREFERRED CLAIMS. If the property of any agent or broker is seized upon any process in any court in this state, or when his or her business is suspended by the action of creditors or put into the hands of any assignee, receiver or trustee, all taxes and penalties due the state from him or her under this section are preferred claims and the state is to that extent a preferred creditor.

History: 1971 c. 260; 1975 c. 371 s. 50; 1979 c. 102 ss. 148, 237; 1987 a. 247; 2001 a. 65; 2011 a. 224; 2015 a. 55.

Cross-reference: See also ss. Ins 6.17 and 6.19, Wis. adm. code.

618.44 Effect of illegal contracts. An insurance contract entered into in violation of this chapter is unenforceable by, but enforceable against, the insurer. The terms of the contract are governed by chs. 600 to 646 and 655 and rules promulgated thereunder. If the insurer does not pay a claim or loss payable under the contract, any person who assisted in the procurement of the contract is liable to the insured for the full amount of the claim or loss, if the person knew or should have known the contract was illegal.

History: 1971 c. 260; 1979 c. 89; 1979 c. 102 s. 236 (8); 1979 c. 177; 1989 a. 187 s. 29.

Nothing in the text of this section suggests that an insurer's having been joined as a defendant prevents a plaintiff from also seeking relief from an insurance agency. What matters under the statute is whether the insurer has refused to pay a covered claim before the plaintiff files suit against the agency. Midwest Commercial Funding, LLC v. Cincinnati Specialty Underwriters Insurance Co., 271 F. Supp. 3d 1040 (2017).

An insurer "enforces" an insurance policy against the insured by collecting the policy premiums. Refusing to pay a claim is not enforcing the policy. It is the insured who seeks to enforce the policy by making a claim for benefits. When the insurer denies the claim based on a policy exclusion, it is simply defending against the insured's claim, not prosecuting its own claim for enforcement of the contract. Midwest Commercial Funding, LLC v. Cincinnati Specialty Underwriters Insurance Co., 399 F. Supp. 3d 736 (2019).

618.45 Servicing of contracts made out of state. (1) SERVICING PERMITTED. A nondomestic insurer which does not have a certificate of authority to do business in this state under s. 618.12 may in this state collect premiums and adjust losses and do all other acts reasonably incidental thereto, with respect to contracts lawfully made outside this state.

(2) CONTRACT CHANGES PROHIBITED. Nothing in sub. (1) shall be interpreted to permit any renewal, extension, increase or other substantial change in the terms of any contract under sub. (1) unless:

(a) It is permitted by s. 618.41; or

(b) The contract is for life or disability insurance; or

(c) It is permitted by a rule promulgated by the commissioner, under circumstances in which the interests of the policyholder and the public appear to be sufficiently protected.

History: 1971 c. 260.

618.47 Defense of action by unauthorized person. (1) CONDITIONS FOR FILING. No pleading, notice, order or process in any court action or in any administrative proceeding before the commissioner instituted against an unauthorized person under ss. 601.72 or 601.73 may be filed by or on behalf of the unauthorized person unless the person either:

(a) Deposits with the clerk of the court in which the action or proceeding is pending, or with the commissioner in administrative proceedings before the commissioner, bond with sureties in an amount fixed by the court or the commissioner, sufficient to secure the payment of any probable final judgment or order. The court, or the commissioner in administrative proceedings before the commissioner, may make an order dispensing with a deposit or bond where the person makes a satisfactory showing that in a state of the United States he or she maintains funds or securities, in trust or otherwise, sufficient and available to satisfy any probable final judgment or order; or

(b) Procures proper authorization to do an insurance business in this state.

(2) POSTPONEMENT. The court in any such action or proceeding, or the commissioner in any administrative proceeding before the commissioner, may order any postponement necessary to afford the unauthorized person reasonable opportunity to comply with sub. (1).

(3) EXCEPTION. Subsection (1) does not prevent an unauthorized person from filing a motion to quash a writ or to set aside service on the ground that he or she has not done an insurance business in this state.

History: 1971 c. 260; 1979 c. 102 ss. 149, 236 (5), (8).

618.48 Attorney fees. In an action against an unauthorized person upon a contract of insurance issued in violation of this chapter, if the unauthorized person fails to make payment in accordance with the contract for 30 days after the payment is due and demand is made, and it appears to the court that the refusal was without reasonable cause, the court may allow the plaintiff a reasonable attorney fee and include the fee in any judgment that may be rendered in the action. Failure of the unauthorized person to defend any such action is prima facie evidence that the failure to pay was without reasonable cause. If the unauthorized person knew or should have known that the contract was in violation of this chapter, the court may also award punitive damages.

History: 1971 c. 260.

618.49 Investigation, disclosure and taxation of insurance contracts. (1) REPORT ON INSURANCE. Whenever the commissioner has reason to believe that insurance has been effectuated by or for any person in this state with an unauthorized insurer, the commissioner may in writing order the person to produce for examination all insurance contracts and other documents evidencing insurance contracts and other documents evidencing insurance with both authorized and unauthorized insurers and to disclose to the commissioner the amount of insurance, name and address of each insurer, gross amount of premium and the name and address of any person who has assisted in the effectuation of the insurance.

(2) UNINSURED PROPERTY. The commissioner may order any owner of property situated in this state, other than property owned by a unit of government that maintains a public fire department and furnishes full fire protection for the property, to furnish in addition to the information furnished under sub. (1) information about amounts paid to or credited to any insurance fund or other reserve against loss or damage by fire. If the owner of the property has not insured it, the owner shall pay under s. 601.93 (2) an amount equal to 2 percent of the annual premium that would have been charged for insuring such property by authorized insurers using the rates promulgated by the rate service organization of which the state insurance fund is a member or subscriber under s. 604.04 (5), or which is designated for that purpose by the commissioner.

History: 1971 c. 260; 1973 c. 336; 1975 c. 372 s. 41; 1975 c. 421; 1979 c. 34 s. 2102 (26) (a).

618.50 Reporting of illegal insurance. (1) ADJUSTERS' DUTY TO REPORT. Every person investigating or adjusting any loss or claim on a subject of insurance in this state shall promptly report to the commissioner every insurance policy or contract connected with his or her investigation or settlement, of which he or she knows, which has been entered into illegally by any insurer not authorized to transact business in this state.

(3) EXCEPTIONS. This section does not apply to transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located or expressly to be performed in this state at the time of issuance.

History: 1971 c. 260; 1979 c. 102; 1981 c. 38.

618.61 Reciprocal enforcement of foreign decrees.

(1) DEFINITIONS. In this section:

(a) "Foreign decree" means any decree or order of a court located in a reciprocal state, including a court of the United States located therein, against any insurer authorized to do business in this state.

(b) "Reciprocal state" means any state the laws of which contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders issued by courts located in other states against any insurer authorized to do business in the reciprocal state, and which in turn recognizes this state as a reciprocal state under its law.

(2) LIST OF RECIPROCAL STATES. The commissioner shall determine which states qualify as reciprocal states and shall maintain a list of them.

(3) ENFORCEMENT OF WISCONSIN DECREES OR ORDERS. The attorney general upon request of the commissioner may proceed in the courts of this state or any other state to enforce an order or decision issued in this state in any court proceeding or in any administrative proceeding before the insurance commissioner.

(4) ENFORCEMENT OF FOREIGN DECREES OR ORDERS. (a) *Filing.* A copy of any foreign decree authenticated in accordance with the statutes of this state may be filed in the office of the clerk of the circuit court for Dane County. The clerk, upon verifying with the commissioner that the decree or order qualifies as a "foreign decree", shall treat it in the same manner and it shall have the same effect as a decree of a circuit court of this state. It is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a decree of a circuit court of this state and may be enforced or satisfied in like manner.

(b) *Notice of filing.* 1. At the time of the filing of the foreign decree, the filer shall deposit with the clerk of the court an affidavit setting forth the name and last-known post-office address of the defendant in this state.

2. Promptly upon the filing of the foreign decree and the affidavit, the clerk of circuit court shall mail notice of the filing of the foreign decree to the defendant at the address given and to the commissioner and shall note the mailing in the court record. In addition, the attorney general may mail a notice of the filing of the foreign decree to the defendant and to the commissioner or the commissioner may mail such a notice to the defendant, and either may file proof of mailing with the clerk of circuit court. Failure of the clerk of circuit court to mail notice of filing shall not affect the enforcement proceedings if the attorney general or commissioner has filed proof of mailing.

3. No execution or other process for enforcement of a foreign decree shall issue until 30 days after the decree is filed.

(c) *Stay.* 1. If the defendant shows the court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

2. If the defendant shows the court any ground upon which enforcement of a decree of any county or circuit court of this state would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree as is required in this state.

(d) *Fees.* Any person filing a foreign decree shall pay to the clerk of court the same fees for any enforcement proceeding as are provided for decrees of the circuit courts.

History: 1971 c. 260; 1977 c. 449; 1983 a. 189; 1995 a. 224.